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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,191	12/15/2003	Robert A. Rowland III	17090.002001	4366

7590 10/26/2006
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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/736,191	ROWLAND, ROBERT A.	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-14, 16, 17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 19-24 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-14, 16, 17, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Formal Matters

After additional searching the examiner has found prior art which reads on previously allowable claim 25 and others, therefore, prosecution is reopened and the finality of the last Office action is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-5, 7 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenson (5,958,420). Jenson discloses a method for inhibiting infection (in a burn patient), comprising:

- (a) disposing a surface of a heat transfer element (Figure 1, # 12) in close proximity to a suspected area of infection;
- (b) causing a rapid temperature change in a suspected area of infection, wherein the rapid temperature change comprises a rapid cooling;
- (c) discontinuing the causing of the rapid temperature change; and
- (d) assessing the suspected area for occurrence of infection (inherent in the treatment process by visual examination or by asking the patient to state his discomfort and col. 1, lines 19-24, 52-57, col. 2, lines 16-57, col. 4, lines 57-63, col. 5, lines 12-29, col. 7, lines 30-40, col. 8, lines 11-39 and col. 9, lines 36-55).

Further to claim 7, the examiner maintains that repeating steps a-d would be inherent if the assessing indicates that the infection may still occur.

Claims 9-14, 16, 17 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Gildersleeve et al. (6,352,550). Gildersleeve et al. et al. disclose an apparatus (Figures 1, 3 and 4) with a heat transfer element having a surface (envelope formed by members 12 and 14) and a thermal energy source (circulating fluid) which when placed against the skin as desired would lower its temperature below its initial temperature; a positioning device (Figure 4 # 17) wherein the thermal energy source and the heat transfer element form an integral unit; wherein the surface of the heat transfer element is configured to a shape of a target area; further comprising a temperature sensor for regulating activation of the thermal energy source by providing and output from the sensor to a controller and pump; wherein the heat transfer element is also an insulating element; wherein the thermal energy source is separately replaceable; and wherein the thermal energy source includes an input for renewal of the fluid as required (col. 5, line 64-col. 7, line 5, col. 9, lines 15-19 and col. 10, line 54-col. 11, line 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 14, 16 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenson. Jenson discloses an apparatus (Figure 1) with a heat transfer element having a surface (envelope # 10) and a thermal energy source (12) which when placed against the burned skin would inherently lower its temperature below its initial temperature; wherein the thermal energy source and the heat transfer element form an integral unit; wherein the surface of the heat transfer element is configured to a shape of a target area; and wherein the heat transfer element is also an insulating element; wherein the thermal energy source is separately replaceable (col. 1, lines 19-24, 52-57, col. 2, lines 16-57, col. 4, lines 57-63, col. 5, lines 12-29, col. 7, lines 30-40, col. 8, lines 11-39 and col. 9, lines 36-55). But, Jenson fails to recite a positioning element. However, Figure 1 suggests a well known means for positioning a thermal wrap or pad to a patient by matching hook and loop fasteners at opposite edges of the pad and, therefore, it would have been obvious to a skillful artisan to provide such a positioning element to attached the apparatus to the patient for heat removal.

Allowable Subject Matter

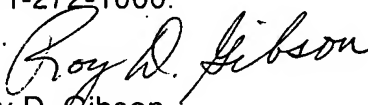
Claims 6 and 19-24 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Roy D. Gibson
Primary Examiner
Art Unit 3739

October 24, 2006